

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5051 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

G S PATEL

Versus

STATE OF GUJARAT

Appearance:

MR RN SHAH for Petitioner
Mr.A.J. Desai ASSTT. GOVERNMENT PLEADER for
Respondents No. 1, 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/04/99

ORAL JUDGEMENT :

The petitioner seeks a direction on respondent no.3, the Accountant General to pass his claim with regard to encashment of Earned Leave of 178 days with interest at the rate of 15 per cent per annum and also to pay interest at the rate of 15 per cent per annum with regard to the amount of gratuity, 1/3rd commuted pension, difference of salary, etc., which the petitioner received

on 29.3.1986, though he ought to have been paid the same within six months from the date of his retirement.

2. The petitioner retired from the post of Project Officer -cum -TDO, Danta. According to him he was not paid the amount of gratuity, etc. and it is only after repeated reminders that he was paid his dues on 29.3.1986. The grievance of the petitioner is that he was not paid encashment of Earned Leave of 178 days which was lying to his credit. According to the petitioner, he was not paid the said amount though it was sanctioned.

3. It has come on record by way of affidavit in reply which has been filed for the respondents that there was some dispute as regards the entry as to the date of birth of the petitioner in his Service Book in connection with which he has approached the Court. It appears that he had continued nearly 11 months beyond the date of his superannuation under the orders of the Court. Furthermore, on the date of his retirement a departmental inquiry was pending against him. As per the date of birth of the petitioner, he had reached the age of superannuation on 9.10.1982. He was, therefore, required to be superannuated with effect from 1.11.1982. "No Due Certificate" was, therefore, forwarded to respondent no.3 on 19.10.1982 with an information that a departmental inquiry was pending against the petitioner. The respondent no.3, Accountant General, therefore, issued the Pension Order on 2.4.1983, sanctioning provisional pension of the petitioner at Rs.549/- per month with effect from 1.11.1982. Under Rule 189B of the Bombay Civil Service Rules, the State is empowered to withhold payment of gratuity pending departmental inquiry. On completion of the inquiry necessary intimation was sent to respondent no.3 vide letter dated 22.8.1985. Thereupon, pursuant to the revision of pension, vide order dated 6.11.1985 orders for payment of final pension, retirement gratuity, commuted value of pension, etc. were issued. Since certain details regarding the petitioner's services as a non gazetted servant were not available, his pension case was revised on 24.2.1986, after those particulars were made available on 29.10.1986. A suit being Civil Suit No.523 of 1982 which was filed by the petitioner was disposed of 28.2.1984, and the plaint was returned to the petitioner. The petitioner who was due to retire with effect from 1.11.1982 happened to be continued in service upto 21.9.1983, in view of the interim order which was made by the Court. That period was, therefore, required to be regularised before making payment of the amount of leave encashment. It is stated that the petitioner has been

paid a sum of Rs.14,866.35 towards leave encashment. The learned counsel admits the fact that the amount of leave encashment has already been received by the petitioner.

4. In view of the aforesaid facts it is clear that there was no undue delay in making payment to the petitioner. There is, therefore, no warrant for putting forth any claim of interest. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

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